

1 John M Vrieze, CSB #115397
William F. Mitchell, CSB #159831
2 MITCHELL, BRISSE, DELANEY & VRIEZE
Attorneys at Law
3 814 Seventh Street
P. O. Drawer 1008
4 Eureka, CA 95502
Tel: (707) 443-5643
5 Fax: (707) 444-9586

6 Attorney for Defendants
County of Del Norte, Jerry Harwood, Bill Steven,
7 Gene McManus, Melanie Barry, Robert Barber,
Ed Fleshman, Keith Morris, A.C. Field,
8 District Attorney Michael Riese, Darren McElfresh

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JOHN GIMBEL,

CASE NO.: C 070113 SBA

13 Plaintiff,

REPLY OF COUNTY OF DEL NORTE,
ET AL., TO OPPOSITION TO MOTION
14 TO DISMISS AMENDED COMPLAINT

vs.

15 STATE OF CALIFORNIA, DEL
NORTE COUNTY SHERIFF'S
16 DEPARTMENT, JERRY HARWOOD,
BILL STEVEN, GENE MCMANUS,
17 MELANIE BARRY, DANA RENO,
ROBERT BARBER, ED FLESHMAN,
18 CRESCENT CITY POLICE
DEPARTMENT, DOUGLASS PLACK,
19 GREG JOHNSON, JAMES HOLT,
CALEB CHADWICK, THOMAS
20 BURKE, DEL NORTE DISTRICT
ATTORNEY KEITH MORRIS, A.C.
21 FIELD, MICHAEL RIESE, DARREN
MCELFRESH, and FRITZ LUDERMAN,

DATE: September 25, 2007
TIME: 1:00 p.m.
CTRM: 3, 3rd Floor

22 Defendants.
23
24
25
26

MITCHELL, BRISSE,
DELANEY & VRIEZE
814 Seventh Street
P.O. Drawer 1008
Eureka, CA 95502

1 Defendants Del Norte County, erroneously named Del Norte County Sheriff's
 2 Department, Jerry Harwood, Bill Steven, Gene McManus, Melanie Barry, Robert Barber,
 3 Ed Fleshman, Keith Morris, A.C. Field, District Attorney Michael Riese, and Darren
 4 McElfresh (jointly referred to herein as "County Defendants"), separating themselves
 5 from all other defendants herein, submit the following as their Reply to plaintiff's
 6 Combined Oppositions To County Defendants' and To City Defendants' Motions to
 7 Dismiss Amended Complaint:

8 In his opposition to defendants' motion to dismiss plaintiff's amended complaint,
 9 plaintiff does not raise any cogent argument to oppose dismissal of his amended
 10 complaint. Plaintiff fails to make any showing to support compliance with Rule 8 of the
 11 Federal Rules of Civil Procedure, which requires that "a pleading which sets forth a claim
 12 for relief...shall contain: 1) a short and plain statement of the grounds upon which the
 13 court's jurisdiction depends, unless the court already has jurisdiction and the claim needs
 14 no new grounds of jurisdiction to support it; 2) a short and plain statement of the claim
 15 showing that the pleader is entitled to relief; and 3) a demand for judgment for the relief
 16 the pleading seeks..." As is discussed in defendants' moving points and authorities,
 17 plaintiff's amended complaint is not much more than an attack on the integrity of the
 18 Court and a diatribe of the Court's order granting defendants' motion to dismiss
 19 plaintiff's complaint. As such, it is subject to dismissal on this ground alone. (See
 20 generally, *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 839-41 (10th Cir.
 21 2005), *U.S. v. Shaffer Equipment Co.*, 111 F.3d 450, 461 (4th Cir. 1993), *Phillips v.*
 22 *Carey*, 628 F.2d 207, 208 (10th Cir. 1981), *Theriault v. Silber*, 579 F.2d 302 (5th Cir.
 23 1978), and *Carrigan v. California State Legislature*, 263 F.2d 560, 564 (9th Cir. 1959).)

24 The Court's order granting defendants' motion to dismiss plaintiff's initial
 25 complaint provided plaintiff with clear direction regarding the basis for claims against the
 26 various defendants in any amended complaint – 1) "plaintiff shall have thirty days from

1 the entry of this order to file an Amended Complaint to properly allege claims, if any,
 2 against District Attorney Defendants,” 2) “plaintiff shall have thirty days from entry of
 3 this order to file an Amended Complaint to properly allege claims, if any, against Sheriff
 4 Department Defendants,” 3) “plaintiff shall have thirty days from the entry of this order
 5 to file an Amended Complaint to properly allege claims, if any, against the County of Del
 6 Norte,” and 4) “plaintiff shall have thirty days from the entry of this order to file an
 7 Amended Complaint to properly allege his state law tort claims, if any, against the
 8 County Defendants.” (See generally, *Order Granting Defendants’ Motion to Dismiss*.)
 9 Plaintiff’s amended complaint fails to state a cognizable claim against any of the County
 10 Defendants, and plaintiff does not provide the court with any argument identifying a
 11 cognizable claim against any of the County Defendants in his opposition to their motion
 12 to dismiss.

13 Plaintiff requests the court to incorporate by reference the pleadings of the initial
 14 complaint into his amended complaint. (See, plaintiff’s combined Oppositions to County
 15 and City, pp. 13, line 22 – pp. 14, line 17.) Even if this were permissible, which it is not,
 16 such incorporation by reference would not save his amended complaint from dismissal.
 17 The court has previously found that plaintiff failed to state a cognizable claim for relief
 18 against any defendant in the underlying complaint, and a melding of both pleadings does
 19 nothing to create an amended complaint with proper allegations against the County
 20 Defendants.

21 In summary, plaintiff’s opposition to this motion to dismiss does not address how
 22 the amended complaint conforms with the Court’s order regarding the filing of an
 23 amended pleading. The amended complaint has not alleged facts showing how the
 24 District Attorney Defendants are not entitled to absolute prosecutorial immunity.
 25 Plaintiff’s amended complaint has not alleged specific facts as to how the Sheriff
 26 Department Defendants’ action or inaction deprived him of his constitutional rights.

1 Plaintiff's amended complaint has not alleged facts sufficient to establish that the County
2 of Del Norte had a formal policy that amounted to deliberate indifference to plaintiff's
3 constitutional rights, which was the moving force behind the constitutional violation(s).
4 And, plaintiff's amended complaint has not alleged specific facts to properly allege state
5 law tort claims against any of the County Defendants.

6 For the reasons set forth herein and for the reasons set forth in the County
7 Defendants' moving papers, it is respectfully submitted that all moving County
8 Defendants be dismissed from this action with prejudice.

9
10 DATED: August 28, 2007

MITCHELL, BRISSO, DELANEY & VRIEZE

11 By: 

12 John M. Vrieze

13 William F. Mitchell

14 Attorneys for Defendants
15
16
17
18
19
20
21
22
23
24
25
26

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Humboldt, over the age of eighteen years and not a party to or interested in the within entitled cause, my business address is 814 Seventh Street, Eureka, California.

On this date, I served the following documents:

**REPLY OF COUNTY OF DEL NORTE, ET AL., TO OPPOSITION TO
MOTION TO DISMISS AMENDED COMPLAINT**

xx

By placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid for collection and mailing on this date and at the place shown, to the party(ies) and at the address(es) set forth below. I am readily familiar with this business' practice for collecting and processing documents for mailing. On the same day that documents are placed for collection and mailing, they are deposited in the ordinary course of business with the United States Postal Service at Eureka, California.

By personally delivering a true copy thereof to the party(ies) and at the address(es) as set forth below.

By personally faxing a true copy thereof to the party(ies) and at the facsimile number(s) as set forth below.

I declare under penalty of perjury that the foregoing is true and correct. Executed August 28, 2007, at Eureka, California.


Micalyn Harris

John Gimbel
225 Brevus Street
Crescent City, CA 95531